IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1793 OF 1996
ALONG WITH
WRIT PETITION NO.4501 OF 1997

WRIT PETITION NO.1793 OF 1996

M/s.Birla Bombay Pvt. Ltd. a Company)
incorporated under the Companies Act,)
1956 and having its registered office)
at Industry House, 159, Churchgate)
Reclamation, Bombay 400 020.).. Petitioner

Versus

1) Vilas A. Manjrekar)
residing at 13/72, B.D.D. Chawl)
Worli, Bombay 400 018.)

2) Shri V.P.Patil, Presiding Officer)
1st Labour Court, Maharashtra at)
Bombay having his Court and office)
at Arun Chambers, 7th Floor)
Tardeo, Bombay 400 034.).. Respondents

Mr.J.P.Cama with Mr.K.P.Anilkumar for the Petitioner.

Mr.Arshad Shaikh for Respondent No.1.

Respondent No.2 formal party.

ALONG WITH
WRIT PETITION NO.4501 OF 1997

Vilas A. Manjrekar)
13/72, B.D.D. Chawl, Worli)
Bombay 400 018.).. Petitioner

Versus

1) Birla Bombay Pvt. Ltd.)
Industry House, 159)
Churchgate Reclamation)
Bombay 400 020.)

2) First Labour Court having its)
office at Arun Chambers, Tardeo)

Bombay 400 034.).. Respondents

Mr.Arshad Shaikh for the Petitioner.

Mr.J.P.Cama with Mr.K.P.Anilkumar for Respondent No.1.

Respondent No.2 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 27TH AUGUST 2004

ORAL JUDGMENT :

. These are cross Writ Petitions filed against the Award dated 26th September 1995 passed by the First Labour Court, Bombay in Reference (IDA) No.297 of 1989. For the sake of convenience, the Petitioner in Writ Petition No.1793 of 1996 and Respondent No.1 in Writ Petition No.4501 of 1997 will be called the "employer" and the Petitioner in Writ Petition No.4501 of 1997 and Respondent No.1 in Writ Petition No.1793 of 1996 will be called the "workman". Respondent No.2 in both the Writ Petitions is the Labour Court who’s award is being impugned in the Writ Petitions.

2. The workman was employed initially as a Peon with the employer. He joined service on 1st November 1968. While in service, he was promoted to the post of a Clerk. The Bombay Labour Union which was the Union functioning in the concern at the relevant time, entered into an agreement with the employer under Section 2(p) read with Section 18(1) of the Industrial Disputes Act,

1947 and Rule 62 of the Industrial Disputes (Bombay) Rules, 1957. Under this agreement, the pay scales for three categories of workers were fixed. The first category was Junior Clerks and Telex Operators. The second category was of Peons and the third category was of Drivers. The services of the workman were to be terminated from 1st May 1988 by way of retrenchment. According to the workman, the employer did not comply with the provisions of law while terminating his services. Therefore, he raised an industrial dispute which was referred for adjudication before the Labour Court, Bombay. Evidence was led by the workman and three witnesses were examined on behalf of the employer. The seniority list of the employees was also produced before the Court. This seniority list shows that the Clerks and Telex Operators were shown in different categories, although they belonged to the same grade. The workman was placed juniormost in the category of Clerks. There is evidence on record to show that the workman although designated as a Clerk was required to do the work as Peon and also function as a Telex or Telephone Operator at times. The Labour Court has held that the termination of service was illegal as there was short payment of retrenchment compensation. The Labour Court has found in these circumstances that the workman was entitled to reinstatement. However, the Labour Court has stated that the workman should be reinstated

as a Peon and not as a Clerk in which post he was working prior to his termination of service.

3. The employer has raised a contention that if the termination is invalid, the workman cannot be reinstated as a Peon. It is submitted on behalf of the employer that the workman was the juniormost Clerk and therefore, cannot be retained in service as there was no work available for him. Exception was taken to the finding of the Labour Court that the termination of service was effected on account of the workman participating in the trade union activities. It is submitted that the allegation of victimisation must be strictly proved as held in *Bharat Iron Works* vs. *Bhagubhai Balubhai Patel* reported in **AIR 1976 SC 98**.

4. On the other hand, it is submitted on behalf of the workman that the settlement indicates that the grade of Junior Clerk and Telex Operators was the same. They belong to the same category and, therefore, while considering the seniority list, it was necessary to consider the seniority of both the Clerks as well as the Telex Operators together. According to the learned Advocate for the workman, the agreement signed clearly shows that the Junior Clerks and Telex Operators are considered to be of same category and, therefore, the workman should not have been considered as the

juniormost in the category of Junior Clerk and Telex Operators.

5. The seniority list which is annexed to the Petition filed by the workman and which was produced before the Labour Court, indicates that A.P.Pareira and Mrs.J.George are junior to the workman. Obviously, therefore, the workman should not have been retrenched as he was not the juniormost in the category of Junior Clerks and Telex Operators. The conclusion of the Labour Court that the services of the workman have been wrongly terminated must, therefore, be accepted. However, the finding that the services were terminated on account of victimisation for participating in trade union activities cannot be accepted as there is no evidence on record to establish the same. There is no dispute that the termination of service was effected with short payment of legal dues. This being so, the Labour Court ought to have reinstated the workman in the category of Junior Clerk and Telex Operator. The Labour Court has erred in concluding that he should be reinstated as a Peon. An observation is made by the Labour Court that in the normal course the Company would have reverted the workman to the original post of Peon, the workman has no grievance if he is reverted to the original post of Peon. These observations are not borne

out by the evidence on record nor is there anything brought on record to show that the workman had conceded that he would be satisfied if he was given employment as a Peon. This being so, it is difficult to accept this observation of the Labour Court. It is further not clear from this observation whether the workman had made a statement either orally or in writing that he may be reverted to the original post of Peon. In these circumstances, this observation cannot be accepted.

6. The Award of the Labour Court is, therefore, modified in the following terms :-

. The employer shall reinstate the workman in the post of Junior Clerk with effect from 31st May 1988 when his services were terminated with continuity of service and full back wages. I am informed that the workman, during the pendency of the Writ Petition, was reinstated as a Peon and even paid wages accordingly. He has now retired from service. The workman would, therefore, be entitled to the difference in wages payable between the post of a Clerk and that of a Peon. The difference to be paid within eight weeks from today.

7. Both the Writ Petitions disposed of accordingly. Rule in Writ Petition No.1793 of 1996 discharged and Rule in Writ Petition No.4501 of 1997 made partly

absolute. No order as to costs.

8. Office to provide authenticated copy of this judgment.